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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
DAYNA M. DECKER : EXAMINER: PRICE, CARL D.  
SERIAL NO: 10/759,508 :  
FILED: JANUARY 15, 2004 : GROUP ART UNIT: 3749  
FOR: CANDLE HAVING A PLANAR :  
WICK AND METHOD OF AND  
EQUIPMENT FOR MAKING SAME

SUBSTITUTE APPEAL BRIEF

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Notice of Non-Compliant Appeal Brief issued on April 7, 2009,  
Applicants submit this Substitute Appeal Brief.

Further to the Notice of Appeal filed on January 5, 2009, this is an Appeal from the  
October 3, 2008 Office Action.

**I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Lumetique, Inc., Studio City, California.

**II. RELATED APPEALS AND INTERFERENCES**

Appellant, Appellant's legal representative and the assignee are aware of no appeals, interferences, or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**III. STATUS OF CLAIMS**

Claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219, 241-262 and 264 are pending.

Claims 1-158, 161, 166, 169, 172, 181, 186, 188, 191, 192, 203, 206, 208, 212, 213, 220-240 and 263 have been cancelled.

Claims 241-262 are allowed.

Claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219 and 264 stand rejected.

The rejections of claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219 and 264 are being appealed.

**IV. STATUS OF AMENDMENTS**

No Amendment After Final Rejection was filed.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 159 is directed to a candle or candle apparatus, including a body of a meltable fuel and a rigid, planar wick provided in the body. *See* present specification, paragraph [0024]; claim 159. The wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; and the width dimension is greater than the thickness dimension. *See* present specification, paragraph [0024]; claim 159. The wick includes a wood selected from poplar and cherry. *See* present specification, paragraph [0028]; claim 159. Claims 160, 162-165, 167, 168, 170, 171 and 173-178 depend from claim 159. *See* claims 160, 162-165, 167, 168, 170, 171 and 173-178.

Independent claim 179 is directed to a candle or candle apparatus, including a body of a meltable fuel and a rigid, planar wick provided in the body. *See* present specification, paragraph [0024]; claim 179. The wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; and the width dimension is greater than the thickness dimension. *See* present specification, paragraph [0024]; claim 179. The wick includes a wood having substantially straight grains aligned substantially in the height dimension. *See* present specification, paragraph [0041]; claim 179. The wood has a moisture content of from 6 to 8 percent. *See* present specification, paragraph [0070] and [0072]; claim 179. Claims 180, 182-185, 187, 189, 190 and 193-198 depend from claim 179. *See* claims 180, 182-185, 187, 189, 190 and 193-198

Independent claim 199 is directed to a candle or candle apparatus, including a body of a meltable fuel and a rigid, planar wick provided in the body. *See* present specification, paragraph [0024]; claim 199. The wick includes a material selected from wood, a wood product, a semi-wood composition, and a wood-like material. *See* present specification, paragraph [0023]; claim 199. The wick has a height dimension, a width dimension, and a

thickness dimension; the height dimension is greater than the width dimension; and the width dimension is greater than the thickness dimension. *See* present specification, paragraph [0024]; claim 199. The thickness dimension of the wick is from 0.023 to 0.028 inches. *See* present specification, paragraph [0071]; claim 199. Claims 200-202, 204, 205, 207, 209-211 and 214-219 depend from claim 199. *See* claims 200-202, 204, 205, 207, 209-211 and 214-219.

Independent claim 264 is directed to a candle or candle apparatus, including a body of a meltable fuel and a rigid, planar wick provided in the body. *See* present specification, paragraph [0024]; claim 264. The wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; and the width dimension is greater than the thickness dimension. *See* present specification, paragraph [0024]; claim 264. The wick includes a wood selected from poplar and cherry. *See* present specification, paragraph [0028]; claim 264. The wood has substantially straight grains aligned substantially in the height dimension. *See* present specification, paragraph [0041]; claim 264. The wood has a moisture content of from 6 to 8 percent. *See* present specification, paragraph [0070] and [0072]; claim 264. The thickness dimension of the wick is from 0.023 to 0.028 inches. *See* present specification, paragraph [0071]; claim 264.

## **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219 and 264 are rejected under 35 U.S.C. §103(a) over SE

9903818 to Ebeling ("Ebeling")\* in view of U.S. Patent No. 6,017,373 to Frisch et al. ("Frisch"), Donnelly, W., "Firewood For Your Fireplace" ("Donnelly"), U.S. Patent No. 383,822 to Munger ("Munger"), U.S. Patent No. 59,839 to Hoard ("Hoard") and U.S. Patent No. 123,917 to Ladd ("Ladd").

## VII. ARGUMENT

As indicated above, claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219 and 264 are rejected under 35 U.S.C. §103(a) over Ebeling in view of Frisch, Donnelly, Munger, Hoard and Ladd. Appellant submits that the outstanding rejection should be reversed for the following reasons.

### A. Claim 159

Claim 159 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; and the wick comprises a wood selected from the group consisting of poplar and cherry" (emphasis added). Ebeling, Frisch, Donnelly, Munger and Ladd do not disclose or suggest such a candle or candle apparatus.

As indicated above, claim 159 is directed to a candle having a planar wick made of poplar or cherry. The Examiner relies on Ebeling for its alleged disclosure of a candle

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\* Discussion of Ebeling is made with reference to the English-language translation prepared by the Patent Office.

including a body of meltable fuel and a thin flat elongate wood or wood product wick disposed in the body. *See* October 3, 2008 Office Action, page 10. Ebeling does, indeed, disclose an outdoor candle including a wick made of wooden material impregnated with a combustable material. *See* Ebeling, pages 4 to 5. However, it is undisputed that Ebeling does not disclose a candle including a poplar or cherry wick.

The Examiner relies on Frisch for its alleged disclosure that natural logs exhibit loud snapping and popping, which arise from heating moisture and sap in the logs. *See* October 3, 2008 Office Action, page 12. However, Frisch provides no disclosure of candle wicks, much less a candle wick made of poplar or cherry. Accordingly, Frisch does not remedy the deficiencies of Ebeling.

The Examiner relies on Donnelly for its alleged disclosure of selecting a given type of wood to create a "crackling fire." *See* October 3, 2008 Office Action, page 12. However, Donnelly provides no disclosure of candle wicks, much less a candle wick made of poplar or cherry. Accordingly, Frisch does not remedy the deficiencies of Ebeling.

The Examiner relies on Munger for its alleged disclosure that wood grain is known to be generally straight. *See* October 3, 2008 Office Action, page 13. While Munger discloses a wick for a machine burner (*see* Munger, lines 40 to 44), Munger provides no disclosure of candle wicks, much less a candle wick made of poplar or cherry. Accordingly, Munger does not remedy the deficiencies of Ebeling.

The Examiner relies on Hoard for its alleged disclosure of forming wicks of pressed wood particle/powder product. *See* October 3, 2008 Office Action, page 13. While Hoard discloses a paper lamp wick (*see* Hoard, lines 9 to 11), Hoard provides no disclosure of candle wicks, much less a candle wick made of poplar or cherry. Accordingly, Hoard does

not remedy the deficiencies of Ebeling.

The Examiner relies on Ladd for its alleged disclosure of forming wicks of fiber board. *See* October 3, 2008 Office Action, page 13. While Ladd discloses a lamp wick formed from wood and a felted fiber (*see* Ladd, column 1, lines 30 to 40), Ladd provides no disclosure of candle wicks, much less a candle wick made of poplar or cherry. Accordingly, Ladd does not remedy the deficiencies of Ebeling.

None of the cited references discloses a candle wick made of poplar or cherry. Accordingly, the combination of references fails to disclose or suggest each and every feature of claim 159. A *prima facie* case of obviousness has not been made.

Although not articulated by the Examiner, the only conceivable way to obtain the claimed invention from the cited references would be to use cherry or poplar wood, disclosed as firewood in Donnelly, to form the wick in the candle of Ebeling. However, the Examiner has failed to articulate an apparent reason why one of ordinary skill in the art would make such a modification. *See, e.g., Ex Parte Whalen*, 89 U.S.P.Q.2d 1078, 1084 (Bd. Pat. App. & Int. 2008) (citing *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007)) (stating that obviousness cannot be proven merely by showing that elements of claimed device were known in prior art; must be shown that skilled artisan would have had some apparent reason to combine known elements in fashion claimed). The wick in the candle of Ebeling is an implement used to burn a combustible fuel. Donnelly only discloses the attributes of firewood. The Examiner has failed to provide any indication of why one of ordinary skill in the art would expect that a wood that produces desirable attributes in a fireplace would also work well as an implement for burning a combustible fuel.

In fact, Donnelly's conclusions regarding the characteristics of firewood are contradictory to the reality of wooden candle wicks. For example, Donnelly discloses that "[a]lmost any wood will pop ...." See Donnelly, page 34. However, as shown in the Declaration (discussed in more detail below), only a very few particular woods will produce a crackling noise when used as candle wicks. Firewood merely burns. Candle wicks must burn consistently, while conveying a combustible fuel. The principles by which candles and fireplaces operate are wholly different. Accordingly, the teachings of Donnelly with regard to the suitability of certain woods as firewood, provides little guidance with respect to the suitability of woods as candle wicks. The Examiner has failed to address this disjoint between the teachings of Ebeling and the teachings of Donnelly.

Appellant discovered that fashioning a candle wick from particular wood species, having particular wick thicknesses, grain alignments and/or moisture contents provides an unexpected effect. The features of the candle wicks in the present claims provide desirable properties, such as a crackling sound, even burn rate, low soot emissions, safe flame burn height, stability of the wick during the burn, and even consumption of fuel, while other combinations of features do not. See, e.g., present specification, paragraph [0070]. Appellant submits that the only "apparent reason" to assemble a combination of features as recited in claim 159 is found in the present specification.

Appellant also submitted experimental data demonstrating the nonobviousness of claim 159 (as well as the other claims), as shown in the Declaration Under 37 C.F.R. §1.132 ("Declaration") filed on September 8, 2008 and attached hereto. It is well-settled that "[a] *prima facie* case of obviousness ... is rebuttable by proof that the claimed compounds possess unexpectedly advantageous or superior properties." See MPEP §2144.09 (citing *In re*



*Papesch*, 315 F.2d 381 (C.C.P.A. 1963)). The Declaration demonstrates that candles including cherry or poplar wicks, as required by claim 159, provide unexpected, superior burning properties (flame, acoustic properties) in comparison to candles including wicks formed from numerous other woods. *See* Declaration, paragraph 5. In particular, the Declaration shows that candles including cherry or poplar wicks provide the combination of a sustained flame and audible crackling noise, while wicks made from 14 other wood species do not. *See* Declaration, Tables A-L. The Declaration affirmatively states that these results are superior and unexpected, and the Examiner has failed to state a rationale for why one of ordinary skill in the art would find otherwise. *See* Declaration, paragraph 5. The results constitute objective evidence of the non-obviousness of claim 159 over the cited references.

When an applicant timely submits evidence traversing a rejection, the examiner must reconsider the patentability of the claimed invention with due consideration to the persuasiveness of any secondary evidence. *See, e.g.*, MPEP §716.01 (citing *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992)). Facts established by rebuttal evidence must be evaluated along with the facts on which the conclusion of a *prima facie* case was reached, not against the conclusion itself. *See, e.g.*, MPEP §716.01 (citing *In re Eli Lilly*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990)). The Examiner appears to struggle to find reasons not to give weight to the experimental data in the Declaration, rather than considering whether the experimental data do, in fact, rebut his alleged *prima facie* case of obviousness.

For example, the Examiner argues that the data are not commensurate in scope with the claims because the results (quality of flame and crackling sound) are not recited in the claims. *See* October 3, 2008 Office Action, page 8. There is simply no requirement in patent

law that claims recite the properties exhibited by the products they encompass – this simply has no bearing on whether the experimental data are commensurate in scope with the claims.

The Examiner further argues that the experimental data are not commensurate in scope with the claims because only one candle configuration was employed. *See* October 3, 2008 Office Action, page 8. This is simply unreasonable. In response to the Examiner's assertion that it would have been obvious to modify the wick in the Ebeling reference, Appellant has provided data for dozens of different wick configurations both within and outside the scope of the present claims, showing that the features of the present claims yield unexpected, superior results. To satisfy the Examiner's apparent need for completeness would require that hundreds (if not thousands) of additional experiments be conducted. The nonobviousness of a claim can be supported by evidence based on unexpected results from less than the entire scope of the claim if one of ordinary skill in the art would be able to determine a trend in the exemplified data which would allow the artisan to reasonably extend the probative value thereof. *In re Kollman*, 595 F.2d 48, 201 USPQ 193 (CCPA 1979). Such is the case with the present data. The Examiner has provided no explanation of why the results in the Declaration would not be representative of the scope of the present claims. That is, the Examiner has not even attempted to give proper weight to the provided data.

The Examiner still further argues that experimental data do not provide a comparison with Ebeling, the alleged closest prior art. *See* October 3, 2008 Office Action, page 8. The Examiner, again, appears to require the impossible. Ebeling provides no indication of the features of the disclosed wick, other than to state that the wick is made of wood. It is not possible to make a comparison with something that simply does not exist. The experimental data in the Declaration include wood wicks both within and outside of the scope of the

present claims. No better comparison could be made on the basis of the disclosure of Ebeling.

For at least the foregoing reasons, Appellant submits that the experimental data submitted thus far support the non-obviousness of the present claims, and the Examiner has failed to give proper weight to that data.

A *prima facie* case of obviousness has not been made, and, even if a *prima facie* case were made, such case is rebutted by the experimental evidence in the Declaration.

**B. Claim 179**

Claim 179 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the wick comprises a wood having substantially straight grains aligned substantially in the height dimension; and the wood has a moisture content of from 6 to 8 percent" (emphasis added). Ebeling, Frisch, Donnelly, Munger and Ladd do not disclose or suggest such a candle or candle apparatus.

As indicated above, claim 179 is directed to a candle including a planar wood wick having a moisture content of from 6 to 8 percent. None of the cited references discloses a wood candle wick having a moisture content of from 6 to 8 percent. Accordingly, the combination of references fails to disclose or suggest each and every feature of claim 179. A *prima facie* case of obviousness has not been made.

Moreover, for the reasons discussed above with respect to claim 159, the Examiner has: (i) failed to articulate an apparent reason to combine the references as would be required to obtain the candle or candle apparatus of claim 179; and (ii) failed to give due weight to the submitted evidence of non-obviousness.

**C. Claim 199**

Claim 199 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a material selected from the group consisting of wood, wood product, a semi-wood composition, and a wood-like material; wherein: the wick has a height dimension, a width dimension, and a thickness

dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; and the thickness dimension of the wick is from 0.023 to 0.028 inches" (emphasis added). Ebeling, Frisch, Donnely, Munger and Ladd do not disclose or suggest such a candle or candle apparatus.

As indicated above, claim 199 is directed to a candle including a planar wood wick having a thickness of from 0.023 to 0.028 inches. None of the cited references discloses a wood candle wick having a thickness of from 0.023 to 0.028 inches. Accordingly, the combination of references fails to disclose or suggest each and every feature of claim 199. A *prima facie* case of obviousness has not been made.

Moreover, for the reasons discussed above with respect to claim 159, the Examiner has: (i) failed to articulate an apparent reason to combine the references as would be required to obtain the candle or candle apparatus of claim 199; and (ii) failed to give due weight to the submitted evidence of non-obviousness.

**D. Claim 264**

Claim 264 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the wick comprises a wood selected from the group consisting of poplar and cherry; the wood has substantially straight grains aligned substantially in the height dimension; the wood has a moisture content of from 6 to 8 percent; and the thickness dimension of the wick is from 0.023 to 0.028 inches" (emphasis added). Ebeling, Frisch, Donnely, Munger and Ladd do not disclose or

suggest such a candle or candle apparatus.

As indicated above, claim 264 is directed to a candle including a planar wood wick formed of poplar or cherry, having substantially straight, vertical grains, having a moisture content of from 6 to 8 percent, and having a thickness of from 0.023 to 0.028 inches. None of the cited references discloses a wood candle wick formed of poplar or cherry, having substantially straight, vertical grains, having a moisture content of from 6 to 8 percent, and having a thickness of from 0.023 to 0.028 inches. Accordingly, the combination of references fails to disclose or suggest each and every feature of claim 264. A *prima facie* case of obviousness has not been made.

Moreover, for the reasons discussed above with respect to claim 159, the Examiner has: (i) failed to articulate an apparent reason to combine the references as would be required to obtain the candle or candle apparatus of claim 264; and (ii) failed to give due weight to the submitted evidence of non-obviousness.

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Claims 159, 179, 199 and 264 would not have been rendered obvious by Ebeling, Frisch, Donnelly, Munger and Ladd. Claims 160, 162-165, 167, 168, 170, 171, 173-178, 180, 182-185, 187, 189, 190, 193-198, 200-202, 204, 205, 207, 209-211 and 214-219 depend variously from claims 159, 179 and 199 and, thus, also would not have been rendered obvious by Ebeling, Frisch, Donnelly, Munger and Ladd. Accordingly, reversal of the rejection is respectfully requested.

**VIII. CONCLUSION**

For the above reasons, it is respectfully requested that all outstanding rejections of the pending claims be REVERSED.

Respectfully submitted,

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**CLAIMS APPENDIX**

Claims 1-158 (Cancelled).

Claim 159 (Previously Presented): A candle or candle apparatus, comprising:  
a body of a meltable fuel; and  
a rigid, planar wick provided in the body;  
wherein:  
the wick has a height dimension, a width dimension, and a thickness dimension;  
the height dimension is greater than the width dimension;  
the width dimension is greater than the thickness dimension; and  
the wick comprises a wood selected from the group consisting of poplar and cherry.

Claim 160 (Previously Presented): The candle or candle apparatus of claim 159,  
wherein the meltable fuel is a paraffin-based wax.

Claim 161 (Cancelled).

Claim 162 (Previously Presented): The candle or candle apparatus of claim 159,  
wherein the meltable fuel is a vegetable oil-based wax.

Claim 163 (Previously Presented): The candle or candle apparatus of claim 159,  
wherein the thickness dimension of the wick is from 0.023 to 0.028 inches.

Claim 164 (Previously Presented): The candle or candle apparatus of claim 159,  
wherein the meltable fuel comprises a paraffin-based wax and a vegetable oil-based wax.



Claim 165 (Previously Presented): The candle or candle apparatus of claim 159, wherein the meltable fuel comprises further components selected from the group consisting of fragrances and dyes.

Claim 166 (Cancelled).

Claim 167 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wood comprises wood or wood particles that have been adhered, bonded, pressed and cut to size.

Claim 168 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wood has a moisture content of from 6 to 8 percent.

Claim 169 (Cancelled).

Claim 170 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wood comprises added resin.

Claim 171 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wood comprises substantially straight grains aligned substantially in the height dimension.

Claim 172 (Cancelled)

Claim 173 (Previously Presented): The candle or candle apparatus of claim 159, wherein the width dimension of the wick is from 1/8 to 20 inches.

Claim 174 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wick extends above the body in the height dimension in an amount of from 1/16 to 1/4 inches.

Claim 175 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wick extends above the body in the height dimension in an amount of from 1/8 to 3/16 inches.

Claim 176 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wick is coated with wax.

Claim 177 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wick comprises a plurality of wicks.

Claim 178 (Previously Presented): The candle or candle apparatus of claim 159, wherein the wick has been subjected to at least one treatment selected from the group consisting of bleaching, dyeing and printing.

Claim 179 (Previously Presented): A candle or candle apparatus, comprising:  
a body of a meltable fuel; and  
a rigid, planar wick provided in the body;  
wherein:

the wick has a height dimension, a width dimension, and a thickness dimension;  
the height dimension is greater than the width dimension;  
the width dimension is greater than the thickness dimension;  
the wick comprises a wood having substantially straight grains aligned substantially  
in the height dimension; and  
the wood has a moisture content of from 6 to 8 percent.

Claim 180 (Previously Presented): The candle or candle apparatus of claim 179,  
wherein the meltable fuel is a paraffin-based wax.

Claim 181 (Cancelled).

Claim 182 (Previously Presented): The candle or candle apparatus of claim 179,  
wherein the meltable fuel is a vegetable oil-based wax.

Claim 183 (Previously Presented): The candle or candle apparatus of claim 179,  
wherein the thickness dimension of the wick is from 0.023 to 0.028 inches.

Claim 184 (Previously Presented): The candle or candle apparatus of claim 179,  
wherein the meltable fuel comprises a paraffin-based wax and a vegetable oil-based wax.

Claim 185 (Previously Presented): The candle or candle apparatus of claim 179,  
wherein the meltable fuel comprises further components selected from the group consisting  
of fragrances and dyes.

Claim 186 (Cancelled).

Claim 187 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wood comprises at least one member selected from the group consisting of poplar and cherry.

Claim 188 (Cancelled).

Claim 189 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wood comprises wood or wood particles that have been adhered, bonded, pressed and cut to size.

Claim 190 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wood comprises added resin.

Claims 191-192 (Cancelled).

Claim 193 (Previously Presented): The candle or candle apparatus of claim 179, wherein the width dimension of the wick is from 1/8 to 20 inches.

Claim 194 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wick extends above the body in the height dimension in an amount of from 1/16 to 1/4 inches.

Claim 195 (Previously Presented): The candle or candle apparatus of claim 179,

wherein the wick extends above the body in the height dimension in an amount of from 1/8 to 3/16 inches.

Claim 196 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wick is coated with wax.

Claim 197 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wick comprises a plurality of wicks.

Claim 198 (Previously Presented): The candle or candle apparatus of claim 179, wherein the wick has been subjected to at least one treatment selected from the group consisting of bleaching, dyeing and printing.

Claim 199 (Previously Presented): A candle or candle apparatus, comprising:  
a body of a meltable fuel; and  
a rigid, planar wick provided in the body, the wick comprising a material selected from the group consisting of wood, wood product, a semi-wood composition, and a wood-like material;

wherein:

the wick has a height dimension, a width dimension, and a thickness dimension;

the height dimension is greater than the width dimension;

the width dimension is greater than the thickness dimension; and

the thickness dimension of the wick is from 0.023 to 0.028 inches.

Claim 200 (Previously Presented): The candle or candle apparatus of claim 199,

wherein the meltable fuel is a paraffin-based wax.

Claim 201 (Previously Presented): The candle or candle apparatus of claim 199, wherein the wick comprises substantially straight grains aligned substantially in the height dimension.

Claim 202 (Previously Presented): The candle or candle apparatus of claim 199, wherein the meltable fuel is a vegetable oil-based wax.

Claim 203 (Cancelled).

Claim 204 (Previously Presented): The candle or candle apparatus of claim 199, wherein the meltable fuel comprises a paraffin-based wax and a vegetable oil-based wax.

Claim 205 (Previously Presented): The candle or candle apparatus of claim 199, wherein the meltable fuel comprises further components selected from the group consisting of fragrances and dyes.

Claim 206 (Cancelled)

Claim 207 (Previously Presented): The candle or candle apparatus of claim 199, wherein the material comprises a wood selected from the group consisting of poplar and cherry.

Claim 208 (Cancelled).

Claim 209 (Previously Presented): The candle or candle apparatus of claim 199, wherein the material comprises wood or wood particles that have been adhered, bonded, pressed and cut to size.

Claim 210 (Previously Presented): The candle or candle apparatus of claim 199, wherein the material comprises added resin.

Claim 211 (Previously Presented): The candle or candle apparatus of claim 199, wherein the material comprises a wood having a moisture content of from 6 to 8 percent.

Claims 212-213 (Cancelled).

Claim 214 (Previously Presented): The candle or candle apparatus of claim 199, wherein the width dimension of the wick is from 1/8 to 20 inches.

Claim 215 (Previously Presented): The candle or candle apparatus of claim 199, wherein the wick extends above the body in the height dimension in an amount of from 1/16 to 1/4 inches.

Claim 216 (Previously Presented): The candle or candle apparatus of claim 199, wherein the wick extends above the body in the height dimension in an amount of from 1/8 to 3/16 inches.

Claim 217 (Previously Presented): The candle or candle apparatus of claim 199,

wherein the wick is coated with wax.

Claim 218 (Previously Presented): The candle or candle apparatus of claim 199,  
wherein the wick comprises a plurality of wicks.

Claim 219 (Previously Presented): The candle or candle apparatus of claim 199,  
wherein the wick has been subjected to at least one treatment selected from the group  
consisting of bleaching, dyeing and printing.

Claim 220-240 (Cancelled).

Claim 241 (Previously Presented): A candle or candle apparatus, comprising:  
a body of a meltable fuel; and  
a rigid, planar wick provided in the body, the wick comprising two sheets of a  
material selected from the group consisting of wood, wood product, a semi-wood  
composition, and a wood-like material;

wherein:

the wick has a height dimension, a width dimension, and a thickness dimension;

the height dimension is greater than the width dimension;

the width dimension is greater than the thickness dimension; and

a flat piece of cotton is sandwiched between the two sheets.

Claim 242 (Previously Presented): The candle or candle apparatus of claim 241,  
wherein the meltable fuel is a paraffin-based wax.



Claim 243 (Previously Presented): The candle or candle apparatus of claim 242, wherein the thickness dimension of the wick is 0.019 to 0.023 inches.

Claim 244 (Previously Presented): The candle or candle apparatus of claim 241, wherein the meltable fuel is a vegetable oil-based wax.

Claim 245 (Previously Presented): The candle or candle apparatus of claim 244, wherein the thickness dimension of the wick is from 0.023 to 0.028 inches.

Claim 246 (Previously Presented): The candle or candle apparatus of claim 241, wherein the meltable fuel comprises a paraffin-based wax and a vegetable oil-based wax.

Claim 247 (Previously Presented): The candle or candle apparatus of claim 241, wherein the meltable fuel comprises further components selected from the group consisting of fragrances and dyes.

Claim 248 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises at least one hardwood.

Claim 249 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises a wood selected from the group consisting of poplar, cherry, maple, wenge, oak, rosewood and bamboo.

Claim 250 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises cherry wood.

Claim 251 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises wood or wood particles that have been adhered, bonded, pressed and cut to size.

Claim 252 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises added resin.

Claim 253 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises a wood having a moisture content of from 10 to 12 percent.

Claim 254 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises a wood having a moisture content of less than about 6 percent.

Claim 255 (Previously Presented): The candle or candle apparatus of claim 241, wherein the material comprises substantially straight grains aligned substantially in the height dimension.

Claim 256 (Previously Presented): The candle or candle apparatus of claim 241, wherein the thickness dimension of the wick is from 0.019 to 0.028 inches.

Claim 257 (Previously Presented): The candle or candle apparatus of claim 241, wherein the width dimension of the wick is from 1/8 to 20 inches.

Claim 258 (Previously Presented): The candle or candle apparatus of claim 241, wherein the wick extends above the body in the height dimension in an amount of from 1/16 to 1/4 inches.

Claim 259 (Previously Presented): The candle or candle apparatus of claim 241, wherein the wick extends above the body in the height dimension in an amount of from 1/8 to 3/16 inches.

Claim 260 (Previously Presented): The candle or candle apparatus of claim 241, wherein the wick is coated with wax.

Claim 261 (Previously Presented): The candle or candle apparatus of claim 241, wherein the wick comprises a plurality of wicks.

Claim 262 (Previously Presented): The candle or candle apparatus of claim 241, wherein the wick has been subjected to at least one treatment selected from the group consisting of bleaching, dyeing and printing.

Claim 263 (Cancelled).

Claim 264 (Previously Presented): A candle or candle apparatus, comprising:  
a body of a meltable fuel; and  
a rigid, planar wick provided in the body;  
wherein:  
the wick has a height dimension, a width dimension, and a thickness dimension;

the height dimension is greater than the width dimension;

the width dimension is greater than the thickness dimension; and

the wick comprises a wood selected from the group consisting of poplar and cherry;

the wood has substantially straight grains aligned substantially in the height dimension;

the wood has a moisture content of from 6 to 8 percent ; and

the thickness dimension of the wick is from 0.023 to 0.028 inches.

**EVIDENCE APPENDIX**

Declaration Under 37 C.F.R. §1.132 (copy attached hereto), filed September 8, 2008, entered and considered by the Examiner in the October 3, 2008 Office Action at pages 2 and 6-9.

**RELATED PROCEEDINGS APPENDIX**

None.